

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**1233 NFS, LLC**, a California  
Limited Liability Company

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of 1233 NFS, LLC, a California Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant 1233 NFS, LLC owned the real property located at or about 1233 N 5<sup>th</sup> St, San Jose, California, upon which the business "US Air Conditioning Distributors" operates, in September 2020.

1       3. Defendant 1233 NFS, LLC owns the real property located at or about  
2 1233 N 5<sup>th</sup> St, San Jose, California, upon which the business “US Air  
3 Conditioning Distributors” operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13  
14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California’s Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25  
26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to US Air Conditioning Distributors in September 2020  
28 with the intention to avail himself of its goods or services motivated in part to

1 determine if the defendants comply with the disability access laws.

2 9. US Air Conditioning Distributors is a facility open to the public, a place  
3 of public accommodation, and a business establishment.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5 to provide wheelchair accessible parking in conformance with the ADA  
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. US Air Conditioning Distributors provides parking to its customers but  
8 fails to provide wheelchair accessible parking.

9 12. One problem that plaintiff encountered is that there was no accessible  
10 parking whatsoever in the parking lot.

11 13. Plaintiff believes that there are other features of the parking that likely  
12 fail to comply with the ADA Standards and seeks to have fully compliant  
13 parking available for wheelchair users.

14 14. On information and belief the defendants currently fail to provide  
15 wheelchair accessible parking.

16 15. Additionally, on the date of the plaintiff's visit, the defendants failed to  
17 provide wheelchair accessible paths of travel in conformance with the ADA  
18 Standards as it relates to wheelchair users like the plaintiff.

19 16. US Air Conditioning Distributors provides paths of travel to its  
20 customers but fails to provide wheelchair accessible paths of travel.

21 17. A couple of problems that plaintiff encountered is that the threshold at  
22 the entrance of US Air Conditioning Distributors required plaintiff to navigate  
23 a small lip that was about an inch in height. There was no ramp for wheelchair  
24 users. What is more, the path of travel from the parking space to the entrance  
25 of US Air Conditioning Distributors gets obstructed when vehicles park near  
26 the entrance and the door is left propped open. The configuration of the  
27 parking space allows cars to park all the way up to the curb, which means that  
28 the front end of vehicles can encroach the clear space in front of the entrance

1 that wheelchair users need.

2 18. Plaintiff believes that there are other features of the paths of travel that  
3 likely fail to comply with the ADA Standards and seeks to have fully compliant  
4 paths of travel available for wheelchair users.

5 19. On information and belief the defendants currently fail to provide  
6 wheelchair accessible paths of travel.

7 20. These barriers relate to and impact the plaintiff's disability. Plaintiff  
8 personally encountered these barriers.

9 21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
10 wheelchair accessible facilities. By failing to provide accessible facilities, the  
11 defendants denied the plaintiff full and equal access.

12 22. The failure to provide accessible facilities created difficulty and  
13 discomfort for the Plaintiff.

14 23. The defendants have failed to maintain in working and useable  
15 conditions those features required to provide ready access to persons with  
16 disabilities.

17 24. The barriers identified above are easily removed without much  
18 difficulty or expense. They are the types of barriers identified by the  
19 Department of Justice as presumably readily achievable to remove and, in fact,  
20 these barriers are readily achievable to remove. Moreover, there are numerous  
21 alternative accommodations that could be made to provide a greater level of  
22 access if complete removal were not achievable.

23 25. Plaintiff will return to US Air Conditioning Distributors to avail himself  
24 of its goods or services and to determine compliance with the disability access  
25 laws once it is represented to him that US Air Conditioning Distributors and its  
26 facilities are accessible. Plaintiff is currently deterred from doing so because  
27 of his knowledge of the existing barriers and his uncertainty about the  
28 existence of yet other barriers on the site. If the barriers are not removed, the

1 plaintiff will face unlawful and discriminatory barriers again.

2 26. Given the obvious and blatant nature of the barriers and violations  
3 alleged herein, the plaintiff alleges, on information and belief, that there are  
4 other violations and barriers on the site that relate to his disability. Plaintiff will  
5 amend the complaint, to provide proper notice regarding the scope of this  
6 lawsuit, once he conducts a site inspection. However, please be on notice that  
7 the plaintiff seeks to have all barriers related to his disability remedied. See  
8 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
9 encounters one barrier at a site, he can sue to have all barriers that relate to his  
10 disability removed regardless of whether he personally encountered them).

11  
12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
13 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
14 Defendants.) (42 U.S.C. section 12101, et seq.)

15 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
16 again herein, the allegations contained in all prior paragraphs of this  
17 complaint.

18 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
19 privileges, advantages, accommodations, facilities, goods and services of any  
20 place of public accommodation is offered on a full and equal basis by anyone  
21 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
22 § 12182(a). Discrimination is defined, inter alia, as follows:

- 23 a. A failure to make reasonable modifications in policies, practices,  
24 or procedures, when such modifications are necessary to afford  
25 goods, services, facilities, privileges, advantages, or  
26 accommodations to individuals with disabilities, unless the  
27 accommodation would work a fundamental alteration of those  
28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

1           b. A failure to remove architectural barriers where such removal is  
2           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
3           defined by reference to the ADA Standards.

4           c. A failure to make alterations in such a manner that, to the  
5           maximum extent feasible, the altered portions of the facility are  
6           readily accessible to and usable by individuals with disabilities,  
7           including individuals who use wheelchairs or to ensure that, to the  
8           maximum extent feasible, the path of travel to the altered area and  
9           the bathrooms, telephones, and drinking fountains serving the  
10          altered area, are readily accessible to and usable by individuals  
11          with disabilities. 42 U.S.C. § 12183(a)(2).

12          29. When a business provides parking for its customers, it must provide  
13          accessible parking.

14          30. Here, accessible parking has not been provided in conformance with the  
15          ADA Standards.

16          31. When a business provides paths of travel, it must provide accessible  
17          paths of travel.

18          32. Here, accessible paths of travel have not been provided in conformance  
19          with the ADA Standards.

20          33. The Safe Harbor provisions of the 2010 Standards are not applicable  
21          here because the conditions challenged in this lawsuit do not comply with the  
22          1991 Standards.

23          34. A public accommodation must maintain in operable working condition  
24          those features of its facilities and equipment that are required to be readily  
25          accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26          35. Here, the failure to ensure that the accessible facilities were available  
27          and ready to be used by the plaintiff is a violation of the law.  
28

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

37. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

38. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

39. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

40. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1 1. For injunctive relief, compelling Defendants to comply with the  
2 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
3 plaintiff is not invoking section 55 of the California Civil Code and is not  
4 seeking injunctive relief under the Disabled Persons Act at all.

5 2. Damages under the Unruh Civil Rights Act, which provides for actual  
6 damages and a statutory minimum of \$4,000 for each offense.

7 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
8 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

9  
10 Dated: January 6, 2021

CENTER FOR DISABILITY ACCESS

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14 By: \_\_\_\_\_

15 Amanda Seabock, Esq.  
16 Attorney for plaintiff  
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